TOWNSHIP OF MAPLEWOOD

RESOLUTION NO. 31-14

RESOLUTION
DECLARING THE TOWNSHIP OF MAPLEWOOD'S INTENT
TO FULLY COMPLY WITH ITS MOUNT LAUREL OBLIGATIONS
VOLUNTARILY AND SEEKING TO SECURE THE BENEFITS
THAT OUR LAWS PROVIDE TO MUNICIPALITIES
THAT COMMIT TO COMPLY VOLUNTARILY
PROTECTION FROM MOUNT LAUREL LAWSUITS

WHEREAS, in Southern Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Supreme Court emphasized its desire to promote voluntary compliance by municipalities: "[o]ur rulings today have several purposes. First, **we intend to encourage voluntary compliance with the constitutional obligation**. . ."; and

WHEREAS, based upon the Supreme Court's desire to promote voluntary compliance, Judge Serpentelli devised the doctrine of "immunity" to enable municipalities to achieve compliance under the protection of any immunity order free from the costs, burdens and distractions of builder's remedy lawsuits; and

WHEREAS, the immunity doctrine enables municipalities to devote the public's finite resources exclusively to compliance, and not litigation, in accordance with the Supreme Court's desire to limit excessive litigation; and

WHEREAS, in Hills Dev. Co. v. Tp. of Bernards, 103 N.J. 1, 64 (1986) ("Mount Laurel III"), the New Jersey Supreme Court openly praised the three Mount Laurel trial judges, which included Judge Serpentelli, for their "innovative refinement of techniques for the process of litigation," and temporary immunity constituted just such a refinement; and

WHEREAS, the Legislature enacted the New Jersey Fair Housing Act ("FHA") in 1985 in response to a plethora of builder's remedy suits precipitated by Mount Laurel II; and

WHEREAS, the Legislature, like the Supreme Court in Mount Laurel II, sought to encourage voluntary compliance by providing a process by which municipalities could bring themselves into COAH's jurisdiction and comply voluntarily under the protective umbrella of COAH's jurisdiction free from the burdens of Mount Laurel lawsuits; and

WHEREAS, indeed, the Legislature clearly stated that it enacted the FHA to create an alternative to builder's remedy litigation: "[T]he State's preference for the resolution of existing and future disputes involving exclusionary zoning is the mediation and review process set forth in this

act and not litigation, and that it is the intention of this act to provide various alternatives to the use of the builder's remedy as a method of achieving fair share housing." See N.J.S.A. 52:27D-303; and

WHEREAS, on August 31, 2001, Judge Serpentelli had the opportunity to reevaluate the immunity doctrine following the enactment of the FHA in a case entitled, K. Hovnanian Shore Acquisitions, Inc. v. Township of Berkeley, Docket No OCN-L-1120-01; and

WHEREAS, in that case, the plaintiff-developer argued that the FHA extinguished the need for temporary immunity by creating a means by which municipalities could voluntarily comply through an administrative process; and

WHEREAS, Judge Serpentelli rejected this argument, even though the FHA had created an administrative alternative to voluntary compliance preferred by all three branches of government; and

WHEREAS, in an opinion entitled K. Hovnanian Shore Acquisitions v. Tp. of Berkeley, 2003 WL 23206281, (App. Div. Jul 01, 2003), the Appellate Division upheld Judge Serpentelli's ruling and declared that "**voluntary compliance is preferred, should be encouraged, and that a builder's remedy action should be considered a remedy of last resort;**" and

WHEREAS, trial judges have routinely used the immunity doctrine to protect municipalities that have expressed a commitment to comply voluntarily; and

WHEREAS, Fair Share Housing Center has brought a motion in aid of litigant's rights in a case entitled In re Adoption Of N.J.A.C. 5:96 and 5:97 By New Jersey Council On Affordable Housing, 416 N.J.Super. 462 (App. Div. 2010), affirmed, 215 N.J. 578 (2013) and sought relief which could expose Maplewood Township, as well as over three hundred other municipalities under COAH's jurisdiction, to Mount Laurel lawsuits; and

WHEREAS, more specifically, FSHC asked the Appellate Division, among other things, to direct trial judges throughout the state to establish the affordable housing standards with which municipalities must comply in lieu of COAH; and

WHEREAS, such a ruling would expose Maplewood to Mount Laurel suits if the Appellate Division, as part of any procedures it may require, does not give Maplewood immunity as it completes the process of voluntary compliance in the court arena that it initiated in the COAH arena; and

WHEREAS, builder's remedy suits are very expensive and the Township intends to take the actions necessary (a) to avoid such costs if the Appellate Division does not incorporate immunity into its rulings and (b) to devote the public's finite resources to compliance with whatever obligations may be assigned; and

WHEREAS, the Township wishes to direct Special Mount Laurel Counsel to move quickly on behalf of the Township to obtain immunity, if the need arises from the rulings issued by the Appellate Division; and

WHEREAS, to this end, the Township wishes to direct counsel to bring a declaratory relief action and to simultaneously seek an immunity order so that the Township may comply with whatever reasonable requirements the trial judge may deem appropriate.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey that:

1. The Township of Maplewood hereby reaffirms its commitment to satisfy any obligations a court may reasonably require.
2. The Township hereby directs its Mount Laurel professionals to draft a declaratory complaint in accordance with applicable law.
3. In the event that the Appellate Division in In Re 5:96 and 5:97 rules that trial judges shall define the affordable housing responsibilities in lieu of COAH and does not provide the Township immunity as part of its rulings, the Township directs its Mount Laurel professionals to immediately (1) file a declaratory action, (2) simultaneously seek temporary immunity from all Mount Laurel lawsuits, effective the date of this resolution; and (3) to take whatever actions are reasonable and necessary to maintain immunity and to assist the Township in securing a formal judgment of constitutional compliance by the Court.
4. This Resolution shall take effect immediately.

I, Elizabeth J. Fritzen, Township Clerk of the Township of Maplewood, in the County of Essex and State of New Jersey, do hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Township Committee of the Township of Maplewood, County of Essex, State of New Jersey, at a regular meeting of said Committee held on February 4, 2014.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Township of Maplewood in the County of Essex and State of New Jersey, on this 4th day of February 2014.

Elizabeth J. Fritzen

ELIZABETH J. FRITZEN, R.M.C.
Township Clerk